

**BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

**In the Matter of the Accusation)
Against:)**

JOSE ROSENDO CESENA, M.D.)

Case No. 800-2017-033914

**Physician's and Surgeon's)
Certificate No. G78761)**

Respondent)

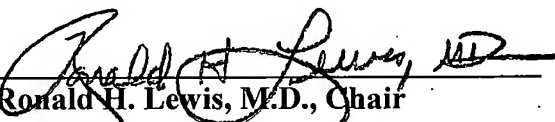
DECISION

The attached Stipulated Settlement and Disciplinary Order for Public Reprimand is hereby adopted as the Decision and Order of the Medical Board of California, Department of Consumer Affairs, State of California.

This Decision shall become effective at 5:00 p.m. on July 5, 2019.

IT IS SO ORDERED June 6, 2019.

MEDICAL BOARD OF CALIFORNIA


Ronald H. Lewis, M.D., Chair
Panel A

1 XAVIER BECERRA
Attorney General of California
2 ALEXANDRA M. ALVAREZ
Supervising Deputy Attorney General
3 JOSEPH F. MCKENNA III
Deputy Attorney General.
4 State Bar No. 231195
600 West Broadway, Suite 1800
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6 San Diego, CA 92186-5266
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8 *Attorneys for Complainant*

9
10 **BEFORE THE**
11 **MEDICAL BOARD OF CALIFORNIA**
12 **DEPARTMENT OF CONSUMER AFFAIRS**
13 **STATE OF CALIFORNIA**

14 In the Matter of the Accusation Against:

Case No. 800-2017-033914

15 **JOSE ROSENDO CESENA, M.D.**

OAH No. 2019011230

16 1421 Burris Drive
17 El Cajon, CA 92019

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER FOR PUBLIC
REPRIMAND**

18 **Physician's and Surgeon's Certificate No.**
19 **G 78761**

20 Respondent.

21
22 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
23 entitled proceedings that the following matters are true:

24 **PARTIES**

25 1. Kimberly Kirchmeyer (Complainant) is the Executive Director of the Medical Board
26 of California (Board). She brought this action solely in her official capacity and is represented in
27 this matter by Xavier Becerra, Attorney General of the State of California, by Joseph F. McKenna
28 III, Deputy Attorney General.

2. Respondent Jose Rosendo Cesena, M.D., (Respondent) is represented in this proceeding by attorney Paul Spackman, Esq., whose address is: 28441 Highridge Road, Suite 201, Rolling Hills Estates, CA 90274.

3. On or about May 4, 1994, the Board issued Physician's and Surgeon's Certificate No. G 78761 to Jose Rosendo Cesena, M.D. The Physician's and Surgeon's Certificate was in full force and effect at all times relevant to the charges brought in Accusation No. 800-2017-033914, and will expire on September 30, 2019, unless renewed.

JURISDICTION

4. Accusation No. 800-2017-033914 was filed before the Board, and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on October 30, 2018. Respondent timely filed his Notice of Defense contesting the Accusation.

5. A copy of Accusation No. 800-2017-033914 is attached as Exhibit A and incorporated herein by reference.

ADVISEMENT AND WAIVERS

6. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Accusation No. 800-2017-033914. Respondent has also carefully read, fully discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary Order for Public Reprimand.

7. Respondent is fully aware of his legal rights in this matter, including the right to a hearing on the charges and allegations in the Accusation; the right to confront and cross-examine the witnesses against him; the right to present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

8. Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

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14. The parties understand and agree that Portable Document Format (PDF) and facsimile copies of this Stipulated Settlement and Disciplinary Order, including PDF and facsimile signatures thereto, shall have the same force and effect as the originals.

15. In consideration of the foregoing admissions and stipulations, the parties agree that the Board may, without further notice or formal proceeding, issue and enter the following Disciplinary Order:

DISCIPLINARY ORDER

A. PUBLIC REPRIMAND

IT IS HEREBY ORDERED that Jose Rosendo Cesena, M.D., Physician's and Surgeon's Certificate No. G 78761, shall be and hereby is publicly reprimanded pursuant to California Business and Professions Code section 2227, subdivision (a)(4). This public reprimand is issued in connection with allegations that Respondent committed repeated negligent acts, failed to maintain adequate and accurate records, and engaged in unprofessional conduct regarding his care, treatment, and prescribing of controlled substances to a patient, as set forth in Accusation No. 800-2017-033914.

B. EDUCATION COURSE

Within 60 calendar days of the effective date of this Decision, Respondent shall submit to the Board or its designee for its prior approval educational program(s) or course(s) which shall not be less than 40 hours. The educational program(s) or course(s) shall be aimed at correcting any areas of deficient practice or knowledge and shall be Category I certified. The educational program(s) or course(s) shall be at Respondent's expense and shall be in addition to the Continuing Medical Education (CME) requirements for renewal of licensure. Following the completion of each course, the Board or its designee may administer an examination to test Respondent's knowledge of the course. Respondent shall participate in and successfully complete the classroom component of the course(s) not later than nine (9) months after Respondent's initial enrollment. Respondent shall successfully complete any other component of the course(s) within one (1) year of enrollment.

///

Respondent shall submit a certification of successful completion to the Board or its designee not later than fifteen (15) calendar days after successfully completing the course(s), or not later than fifteen (15) calendar days after the effective date of the Decision, whichever is later.

C. PRESCRIBING PRACTICES COURSE

Within 60 calendar days of the effective date of this Decision, Respondent shall enroll in a course in prescribing practices approved in advance by the Board or its designee. Respondent shall provide the approved course provider with any information and documents that the approved course provider may deem pertinent. Respondent shall participate in and successfully complete the classroom component of the course not later than six (6) months after Respondent's initial enrollment. Respondent shall successfully complete any other component of the course within one (1) year of enrollment. The prescribing practices course shall be at Respondent's expense and shall be in addition to the Continuing Medical Education (CME) requirements for renewal of licensure.

A prescribing practices course taken after the acts that gave rise to the charges in the Accusation, but prior to the effective date of the Decision may, in the sole discretion of the Board or its designee, be accepted towards the fulfillment of this condition if the course would have been approved by the Board or its designee had the course been taken after the effective date of this Decision.

Respondent shall submit a certification of successful completion to the Board or its designee not later than 15 calendar days after successfully completing the course, or not later than 15 calendar days after the effective date of the Decision, whichever is later.

D. MEDICAL RECORD KEEPING COURSE

Within 60 calendar days of the effective date of this Decision, Respondent shall enroll in a course in medical record keeping approved in advance by the Board or its designee. Respondent shall provide the approved course provider with any information and documents that the approved course provider may deem pertinent. Respondent shall participate in and successfully complete the classroom component of the course not later than six (6) months after Respondent's initial enrollment. Respondent shall successfully complete any other component of the course within

1 one (1) year of enrollment. The medical record keeping course shall be at Respondent's expense
2 and shall be in addition to the Continuing Medical Education (CME) requirements for renewal of
3 licensure.

4 A medical record keeping course taken after the acts that gave rise to the charges in the
5 Accusation, but prior to the effective date of the Decision may, in the sole discretion of the Board
6 or its designee, be accepted towards the fulfillment of this condition if the course would have
7 been approved by the Board or its designee had the course been taken after the effective date of
8 this Decision.

9 Respondent shall submit a certification of successful completion to the Board or its
10 designee not later than 15 calendar days after successfully completing the course, or not later than
11 15 calendar days after the effective date of the Decision, whichever is later.

12 ACCEPTANCE

13 I have carefully read the above Stipulated Settlement and Disciplinary Order for Public
14 Reprimand and have fully discussed it with my attorney, Paul Spackman, Esq. I understand the
15 stipulation and the effect it will have on my Physician's and Surgeon's Certificate. I enter into
16 this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and
17 agree to be bound by the Decision and Order of the Medical Board of California.

18
19 DATED:

4/22/19

JOSE ROSENDO CESENA, M.D.
Respondent

22 I have read and fully discussed with Respondent Jose Rosendo Cesena, M.D. the terms and
23 conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order
24 for Public Reprimand. I approve its form and content.

25
26 DATED:

April 22, 2019

PAUL SPACKMAN, ESQ.
Attorney for Respondent

ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order for Public Reprimand is hereby respectfully submitted for consideration by the Medical Board of California.

Dated: 4/22/19

Respectfully submitted,

XAVIER BECERRA
Attorney General of California
ALEXANDRA M. ALVAREZ
Supervising Deputy Attorney General

A handwritten signature in black ink, appearing to read "JF McKenna III", followed by the word "for" in a cursive script.

JOSEPH F. MCKENNA III
Deputy Attorney General
Attorneys for Complainant

SD2018702133
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Exhibit A

Accusation No. 800-2017-033914

1 XAVIER BECERRA
Attorney General of California
2 ALEXANDRA M. ALVAREZ
Supervising Deputy Attorney General
3 JOSEPH F. MCKENNA III
Deputy Attorney General
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8 *Attorneys for Complainant*

FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO *Oct. 30 20 18*
BY *[Signature]* ANALYST

10 **BEFORE THE**
11 **MEDICAL BOARD OF CALIFORNIA**
12 **DEPARTMENT OF CONSUMER AFFAIRS**
13 **STATE OF CALIFORNIA**

14 In the Matter of the Accusation Against:

Case No. 800-2017-033914

15 **Jose Rosendo Cesena, M.D.**
16 **1421 Burris Drive**
El Cajon, California 92019

A C C U S A T I O N

17 **Physician's and Surgeon's Certificate**
18 **No. G78761,**

19 Respondent.

20 Complainant alleges:

21 **PARTIES**

22 1. Kimberly Kirchmeyer (Complainant) brings this Accusation solely in her official
23 capacity as the Executive Director of the Medical Board of California, Department of Consumer
24 Affairs.

25 2. On or about May 4, 1994, the Medical Board issued Physician's and Surgeon's
26 Certificate No. G78761 to Jose Rosendo Cesena, M.D. (Respondent). The Physician's and
27 Surgeon's Certificate was in full force and effect at all times relevant to the charges brought
28 herein and will expire on September 30, 2019, unless renewed.

JURISDICTION

3. This Accusation is brought before the Medical Board of California (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code (Code) unless otherwise indicated.

4. Section 2227 of the Code provides that a licensee who is found guilty under the Medical Practice Act may have his or her license revoked, suspended for a period not to exceed one year, placed on probation and required to pay the costs of probation monitoring, be publicly reprimanded which may include a requirement that the licensee complete relevant educational courses, or have such other action taken in relation to discipline as the Board deems proper.

5. Section 2234 of the Code states, in relevant part:

“The board shall take action against any licensee who is charged with unprofessional conduct. In addition to other provisions of this article, unprofessional conduct includes, but is not limited to, the following:

“(a) Violating or attempting to violate, directly or indirectly, assisting in or abetting the violation of, or conspiring to violate any provision of this chapter.

“... ”

“(c) Repeated negligent acts. To be repeated, there must be two or more negligent acts or omissions. An initial negligent act or omission followed by a separate and distinct departure from the applicable standard of care shall constitute repeated negligent acts.

“ ... ”

6. Unprofessional conduct under section 2234 of the Code is conduct which breaches the rules or ethical code of the medical profession, or conduct which is unbecoming to a member in good standing of the medical profession, and which demonstrates an unfitness to practice medicine. (*Shea v. Board of Medical Examiners* (1978) 81 Cal.App.3d 564, 575.).

7. Section 2266 of the Code states:

“The failure of a physician and surgeon to maintain adequate and accurate records relating to the provision of services to their patients constitutes unprofessional conduct.”

1 **FIRST CAUSE FOR DISCIPLINE**

2 **(Repeated Negligent Acts)**

3 8. Respondent has subjected his Physician's and Surgeon's Certificate No. G78761 to
4 disciplinary action under sections 2227 and 2234, as defined in section 2234, subdivision (c), of
5 the Code, in that Respondent committed repeated negligent acts in his care and treatment of
6 patient A, as more particularly alleged hereinafter:

7 9. Patient A established care with Respondent in 2006.¹ Patient A had a history of
8 multiple medical conditions including, but not limited to, active drug seeking behavior, opiate
9 dependency, alcohol dependency, chronic pain, anxiety, major depression, personality disorder,
10 hypertension, and asthma.

11 10. Between in or around January 2009 through December 2012, a review of the
12 Controlled Substance Utilization Review and Evaluation System² (CURES) report contained in
13 patient A's medical record documented that she had consistently filled monthly prescriptions
14 issued by Respondent for multiple controlled substances including, but not limited to, opioids and
15 benzodiazepines.

16 11. On or about April 26, 2012, Respondent saw patient A due to complaints of post-
17 operative pain and difficulty ambulating. Patient A reported to Respondent that she had been
18 using twelve (12) Percocet tablets a day.³ Respondent, despite advising patient to reduce her

19 ¹ Conduct occurring more than seven (7) years from the filing date of this Accusation is
20 for informational purposes only and is not alleged as a basis for disciplinary action.

21 ² The Controlled Substance Utilization Review and Evaluation System (CURES) is a
22 program operated by the California Department of Justice (DOJ) to assist health care practitioners
23 in their efforts to ensure appropriate prescribing of controlled substances, and law enforcement
24 and regulatory agencies in their efforts to control diversion and abuse of controlled substances.
25 (Health & Saf. Code, § 11165.) California law requires dispensing pharmacies to report to the
DOJ the dispensing of Schedule II, III, and IV controlled substances as soon as reasonably
possible after the prescriptions are filled. (Health & Saf. Code, § 11165, subd. (d).) It is
important to note that the history of controlled substances dispensed to a specific patient based on
the data contained in CURES is available to a health care practitioner who is treating that patient.
(Health & Saf. Code, § 11165.1, subd. (a).)

26 ³ Percocet is a brand name for the drug combination of oxycodone-acetaminophen, which
27 is an opioid commonly prescribed under the generic name of Oxycodone HCL-Acetaminophen,
28 and is a Schedule II controlled substance pursuant to Health and Safety Code section 11055,
subdivision (b), and a dangerous drug pursuant to Business and Professions Code section 4022.

1 Percocet use, issued another large prescription for Oxycodone HCL-Acetaminophen (325 MG-10
2 MG) (#250). Respondent also issued several other prescriptions for controlled substances at this
3 visit including, but not limited to, morphine, clonazepam, and alprazolam.

4 12. On or about May 22, 2012, patient A was evaluated by Dr. S.S., an orthopedic
5 surgeon, for complaints of pain.⁴ Dr. S.S. noted that the patient had good range of motion, no
6 crepitus, mild tenderness to palpation, and there was no orthopedic explanation for patient's self-
7 reported pain. Dr. S.S. also documented that patient had slurred speech during the visit and
8 recommended that she be "vigorously" weaned off of pain medication due to no orthopedic
9 explanation for the pain.

10 13. In May 2012, Respondent, despite recently warning patient A to reduce her use of
11 opioids, issued two (2) prescriptions in a single month for Oxycodone HCL-Acetaminophen (325
12 MG-10 MG) (#250), totaling five hundred (#500) tablets. In addition, during this same month,
13 Respondent, despite the existence of documented red flags of aberrant drug behaviors including,
14 but not limited to, drug seeking behavior, chemical dependence, and evidence of opioid tolerance,
15 reissued several more prescriptions for other controlled substances including, hydrocodone,
16 clonazepam, alprazolam, and morphine.

17 14. In fact, on or about May 23, 2012, only one day after Dr. S.S. saw patient A and had
18 documented no medical explanation existed for her reported pain, Respondent still issued
19 additional prescriptions to Patient A for Percocet (#250), morphine (#120), clonazepam (#120),
20 and alprazolam (#60).

21 15. Between in or around January 2009 through December 2012, Respondent did not
22 properly and thoroughly document pertinent information in the chart notes for Patient A's clinical
23 visits including, but not limited to, pain assessment, functional status, detailed examination
24 continued:

25 When properly prescribed and indicated, Oxycodone is used for the treatment of moderate
26 to moderately severe pain. The Drug Enforcement Administration (DEA) has identified opioids,
27 such as Oxycodone, as a drug of abuse. (Drugs of Abuse, DEA Resource Guide (2015 Edition),
28 at p. 43.)

⁴ Patient A's medical record indicates that prior to this visit, she was last seen by a pain
management physician in 2009.

1 findings in the areas of reported pain, previous diagnostic evaluations, and prior treatment. In
2 addition, Respondent did not document in the patient's medical record that he had discussed with
3 her the risks and benefits of the concurrent use of opioids and benzodiazepines.

4 16. Respondent committed repeated negligent acts in his care and treatment of
5 Patient A including, but not limited to, the following:

6 (a) Respondent prescribed high dose narcotics without clear benefit to Patient A,
7 who was a high risk patient exhibiting multiple red flags of aberrant drug behaviors;

8 (b) Respondent failed to properly and thoroughly document the medical
9 record with information pertinent to the pain management treatment Patient A was
10 receiving from Respondent; and

11 (c) Respondent failed to document in the medical record that he had discussed with
12 Patient A about the risks and benefits of concurrent use of opioids and benzodiazepines.

13 **SECOND CAUSE FOR DISCIPLINE**

14 **(Failure to Maintain Adequate and Accurate Medical Records)**

15 17. Respondent has further subjected his Physician's and Surgeon's Certificate
16 No. G78761 to disciplinary action under sections 2227 and 2234, as defined in section 2266, of
17 the Code, in that Respondent failed to maintain adequate and accurate records in connection with
18 his care and treatment of patient A, as more particularly alleged in paragraphs 8 through 16,
19 above, which are hereby incorporated by reference and realleged as if fully set forth herein.

20 **THIRD CAUSE FOR DISCIPLINE**

21 **(Unprofessional Conduct)**

22 18. Respondent has further subjected his Physician's and Surgeon's Certificate No.
23 G78761 to disciplinary action under sections 2227 and 2234 of the Code, in that Respondent has
24 engaged in conduct which breaches the rules or ethical code of the medical profession, or conduct
25 which is unbecoming to a member in good standing of the medical profession, and which
26 demonstrates an unfitness to practice medicine, as more particularly alleged in paragraphs 8
27 through 17, above, which are hereby incorporated by reference and realleged as if fully set forth
28 herein.

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Medical Board of California issue a decision:

1. Revoking or suspending Physician's and Surgeon's Certificate No. G78761, issued to Respondent Jose Rosendo Cesena, M.D.;

2. Revoking, suspending or denying approval of Respondent Jose Rosendo Cesena, M.D.'s, authority to supervise physician assistants pursuant to section 3527 of the Code, and advanced practice nurses;

3. Ordering Respondent Jose Rosendo Cesena, M.D., to pay the Medical Board the costs of probation monitoring, if placed on probation; and

4. Taking such other and further action as deemed necessary and proper.

DATED: October 30, 2018


KIMBERLY KIRCHMEYER
Executive Director
Medical Board of California
Department of Consumer Affairs
State of California
Complainant

SD2017802115
Doc.No.71634742